

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



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P/S

# 75-7031-55

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IN THE  
**United States Court of Appeals**  
For the Second Circuit

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Docket Nos. 75-7031, 75-7055

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HOWARD BERSCH,

*Plaintiff-Appellant,*

v.

DREXEL FIRESTONE, INC., DREXEL HARRIMAN RIPLEY,  
BANQUE ROTHSCHILD, HILL SAMUEL AND CO., LIM-  
ITED, GUINNESS MAHON & CO., LIMITED, PIERSON,  
HELDING & PIERSON, SMITH BARNEY & CO., INCOR-  
PORATED, J. H. CRANG & CO., INVESTORS OVERSEAS  
BANK LIMITED, ARTHUR ANDERSEN & CO., I.O.S., LTD.,  
and BERNARD CORNFELD,

*Defendants,*

and

J. H. CRANG & CO.,

*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

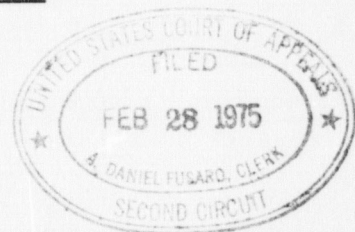
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**APPENDIX FOR DEFENDANT-APPELLEE**  
**J. H. CRANG & CO.**

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WILLKIE FARR & GALLAGHER  
*Attorneys for Defendant-Appellee*  
*J.H. Crang & Co.*  
One Chase Manhattan Plaza  
New York, New York 10005

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APPENDIX

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Letter, dated May 6, 1971, from Roberta S.  
Karmel to Leonard H. Rossen

- 1CA -

Letter, dated May 6, 1971, from Roberta S.  
Karmel to Leonard H. Rossen

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May 6, 1971

Mr. Leonard H. Rossen  
Ass't Director  
Division of Trading and Markets  
Securities and Exchange Commission  
200 North Capitol Street  
Washington, D. C. 20549

Re: J. H. Crang & Co. Limited

Dear Mr. Rossen:

Reference is made to your letter dated April 15, 1971 to Jerome Siegman, Esq. and prior correspondence and communications with you concerning the broker-dealer registration of J. H. Crang & Co. Limited ("Crang"). In order to place Crang's present difficulties with the Commission in a proper context, certain general facts about Crang's business and operations should be brought to your attention.

Description of Business

Crang is a well-established brokerage firm engaged in a wide variety of investment banking activities, which has been in business in Canada since 1929. It is presently a member of the Toronto, Montreal, Canadian, Calgary and Vancouver Stock Exchanges, the Winnipeg Grain Exchange and the Investment Dealers' Association of Canada and is a registrant of the Ontario Securities Commission. Crang has approximately 30,000 brokerage accounts and is one of the ten largest Canadian brokerage houses. Its principal office is in Toronto and it has a total of 21 branch offices in Canada. The firm has more than 100 securities salesmen registered with the Ontario Securities Commission, the Investment Dealers' Association, and the stock exchanges of which it is a member. In order to become registered with these regulatory bodies at the present time, a salesman must successfully



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Mr. Leonard H. Rossen

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May 6, 1971

complete the Canadian Securities Course, which includes a written examination. These tests of a salesman's fitness to hold such registration are administered by the Canadian Securities Institute and accepted by all of the Canadian stock exchanges and other regulatory bodies.

Fifteen years ago Crang opened a branch office in New York and at that time became a broker-dealer registered with the SEC and joined the NASD. (Crang was then a partnership. The present registered broker-dealer is a successor corporation to the business of that partnership.) In late 1968, effective in the spring of 1969, Crang closed its New York branch office. Thereafter it was requested to withdraw from the NASD because it no longer had an office in the United States and such withdrawal became effective in February of 1970. During the period of time that Crang was a member of the NASD it filed its annual official Toronto Stock Exchange audit as at March 31 of each year with the NASD. This year-end audit is prepared in accordance with Canadian law by an independent firm of auditors selected from the Toronto Stock Exchange approved panel of auditors. Regular surprise interim questionnaire audits which are comparable in scope are prepared by an internal audit staff of each member firm under the supervision of the Toronto Stock Exchange Examiner. I am enclosing herewith a copy of Crang's annual official Toronto Stock Exchange audit form as at March 31, 1971. Upon your request, I will be happy to send you copies of Crang's interim questionnaire audits as at June 30, 1970 and October 30, 1970, and its unaudited financial statement as at December 30, 1970.

At the present time Crang has no business offices in the United States and no direct telephone connections into the United States. The only business it transacts in the U. S. securities markets is the purchase and sale of U. S. securities for its Canadian clients, through the Toronto offices of two large U. S. New York Stock Exchange member firms.

You have raised a number of questions concerning Crang's compliance with various regulations under the Securities Exchange Act of 1934 ("Exchange Act"). Crang believes that it is the only Canadian broker-dealer registered with the SEC and not a member of a U. S. national securities exchange, whose registration embraces its entire corporate

Mr. Leonard H. Rossen

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May , 1971

structure, as compared with usual Canadian practice whereby only the U. S. subsidiary corporation of a Canadian parent is the registrant. It is this unique anomaly which has given rise to Crang's present difficulties with the Commission. For reasons which will be set forth below, Crang believes and it has decided that the firm cannot remain registered with the SEC and continue to operate as a Canadian broker-dealer. Accordingly, Crang's ultimate objective in this matter is to withdraw its broker-dealer registration.

Crang appreciates that in order to obtain your acquiescence to the withdrawal of its broker-dealer registration you should be assured of the firm's good faith in attempting to comply with your prior requests and the requirements of the securities acts, particularly the Exchange Act. At the same time, the firm is anxious to clarify its status and would appreciate your cooperation in effecting this withdrawal so that it can avoid any technical violations of the Exchange Act, either through inadvertence or the passage of time.

#### Inspection of Books and Records

Without making a formal demand, you have requested that Crang produce all of its books and records for the past three years ending March 31, 1971 at the New York Regional Office of the Commission. Although Crang acknowledges that you have the legal right to make such a demand, delivery of its books and records to New York is virtually impossible, as a practical matter, because of the scope and extent of Crang's operations and the necessary interruption of Crang's business operations which would be involved. As stated above, Crang has approximately 30,000 accounts.

Nevertheless, Crang appreciates your concern and your proper interest in examining its books and records and, therefore, the firm is willing to have as many SEC investigators as may be necessary or appropriate visit its offices in Canada, at Crang's expense, and inspect any or all of its books and records. Because of the magnitude of Crang's operations, I suggest that the firm be given some indication as to the particular books and records which your investigators wish to inspect prior to their visit so that such books and records can be made readily available. If you are agreeable to sending your investigators to conduct an examination under these circumstances, please telephone Mr. David M. Dunlap at



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Mr. Leonard H. Rossen

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Crang's offices to make the necessary arrangements -- Telephone No. (416)363-8611.

17A-5 and 17A-10 Reports

Enclosed herewith are Crang's most recent annual official Toronto Stock Exchange audit forms. Upon your request, copies of prior year-end annual audit forms could be furnished to you. Further, Crang has requested its auditors to prepare a report on Form X-17A-5 as at March 31, 1971 for filing with you and Crang is hopeful that such report can be filed within 45 days after the audit date. If it becomes apparent that this time schedule cannot be met because of the necessity of the auditors to file reports in conformity with Canadian securities regulations, we will request an appropriate extension of time. Crang has further requested its auditors to prepare a report on Form X-17A-10 for 1970 for filing with you. However, because of serious practical difficulties involved in adapting the information readily available to Crang and Crang's auditors to the specifications of Rule 17a-10 and the involvement of these auditors in their annual audit under Canadian law, the auditors have been unable to complete the report for filing with you by April 30, 1971. It is therefore requested that an extension of time for an additional 30 days be given as permitted by Rule 17a-10(d) under the Exchange Act.

In this connection we hope you will appreciate and take into consideration certain problems resulting from the fact that all of Crang's bookkeeping and accounting is performed and maintained by the IBM Datacenter in Toronto, a facility which handles the bookkeeping and accounting for about two-thirds of Toronto Stock Exchange member firms. The programs of the Datacenter do not have the capability to break out sources of revenue in all of the categories required by Form X-17A-10. Similarly, the programs count a transaction between a client on one side and the broker with whom Crang deals on the other side as two trades, whereas the SEC instructions to Form X-17A-10 require that such a transaction be counted as one trade. Therefore, all of Crang's transactions must be manually examined in order to complete the Form. The magnitude of the firm's operations makes such a manual examination an extremely difficult and expensive task.



Mr. Leonard H. Rossen

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May 6, 1971

Both Rules 17a-5 and 17a-10 contain appropriate exceptions which permit members of national securities exchanges or associations, among others, to file reports required by such regulatory bodies in order to satisfy the financial reporting rules of the Commission. At this time I am not prepared to argue whether the filing by Crang of its Toronto Stock Exchange audit with the Commission would legally satisfy Crang's responsibilities under Rules 17a-5 and 17a-10. Nevertheless, the contents and substance of the enclosed financial reports are sufficiently similar to the Reports required by the Commission's rules to satisfy the public interest in the administration of these rules in view of the fact that Crang is a foreign investment banker over which the Commission can properly claim only limited and concurrent jurisdiction with the Canadian authorities. In this connection, you should realize that the "net capital" requirements for Toronto Stock Exchange member firms are more stringent, in certain respects, than the "net capital" rules applicable to New York Stock Exchange member firms.

#### SECO Regulations

As pointed out above, Crang believes that it is the only Canadian broker-dealer registered with the SEC and not a member of a U. S. national securities exchange, whose registration embraces its entire corporate structure. Even though Crang is a registered broker-dealer, there is a nice legal question as to whether it is subject to Section 15(b)(8) of the Exchange Act. In any event, practical considerations are more crucial than legal theory to Crang and Crang cannot join SECO and continue in business as a Canadian investment banker.

Although all of its approximately 100 registered representatives have met the requisites for registration with the various Canadian regulatory agencies to which Crang is subject, little of the knowledge required to pass the SECO examination, which is not included in the Canadian Securities Course, is relevant to the selling of securities in Canada. Securities salesmen do not have strong corporate loyalties and only two of the hundreds of Canadian firms require their salesmen to take the equivalent of SECO examinations. These two firms do so only because they are New York Stock Exchange members. If Crang should request its salesmen to take and pass SECO examinations, the business

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Mr. Leonard H. Rossen

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May 6, 1971

consequences would be that the firm's registered representatives would seek work at another Canadian brokerage house where SECO examinations are not required. Because of the seriousness of this competitive disadvantage Crang cannot and will not compel its sales force to submit to SECO examinations.

Summary

By way of summary, Crang proposes to withdraw its broker-dealer registration as soon as it receives your assurance that you would not institute proceedings to prevent such a withdrawal. In order to demonstrate its sincere good faith and intention to fully comply with the federal securities laws, Crang will file Form X-17A-5 and X-17A-10 Reports prior to withdrawing its present broker-dealer registration. Further, in order to expedite and facilitate your inspection of Crang's books and records, the firm will make its books and records available to one or more Commission securities investigators and pay the expenses of having such investigators travel from either Washington or New York to Toronto.

In view of the time pressures involved in preparing the Form X-17A-5 and Form X-17A-10 Reports for filing during 1971 and the time which has elapsed to date in resolving Crang's difficulties with you, it is requested that you reply to this letter, and particularly the request herein for an extension of time to file Form X-17A-10 Report as promptly as possible. If you wish to discuss any of these matters further, please feel free to telephone me. In addition, I will be happy to make arrangements to discuss these matters with you personally at your offices if you feel that such a conference would be helpful.

Because Crang is subject to the jurisdiction of the Ontario Securities Commission and the Toronto Stock Exchange, it is keeping these regulatory bodies informed about the matters discussed above and has forwarded a copy of this letter to them.

Sincerely,

Roberta S. Karmel

RSK/jc

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7CA'

Letter, dated November 10, 1972, from Howard  
C. Buschman III to Sidney B. Silverman



2. A portion of the computer printout of the customers of Crang to whom I.O.S., Ltd. shares were sold pursuant to the Canadian Prospectus which indicates the addresses of said customers:

Sidney B. Silverman, Esq.

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November 10, 1972

3. All correspondence and written material relating to the underwriting pursuant to the Canadian Prospectus which was sent by Crang or received by Crang from those individuals who sold shares pursuant to the Canadian Prospectus;

4. All correspondence between Crang and any other defendant in the above captioned action, ~~xxxxxxxixxxx~~  
~~xxxxxxxxxxxxxxxxxxxx~~ which relates to any offering of shares of I.O.S., Ltd. in 1969;

5. Any sales memoranda sent by Crang to its employees relating to who was eligible to buy I.O.S., Ltd. shares;

6. A chart or letterhead which indicates the location of Crang's offices in 1969 and 1971.

7. A statement, based on a sample consisting of examination of the second week of every other month during the period of September 1, 1969 to December 7, 1971, listing in dollar (U.S.) amounts the commissions earned by Crang relating to the following business done by Crang for each such week:

(a) transactions performed on behalf of clients who were residents of the United States, and

(b) transactions in securities issued by companies incorporated in the United States.

The documents listed in items 1 through 6 above will be produced on December 4, 1972. The statements contained in item 7, will, I am sure you recognize, take considerable time to prepare. Crang will attempt to have these for you by December 15, 1972.

It is our understanding that the motion to compel Crang to produce documents presently scheduled for November 16, 1972, is withdrawn as to Crang without prejudice and without costs. Will you please so inform Judge Ryan.

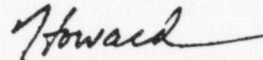
Sidney B. Silverman, Esq.

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November 10, 1972

If the above fairly states our understanding,  
would you please sign the enclosed copy of this letter  
and return it to me.

Very truly yours,



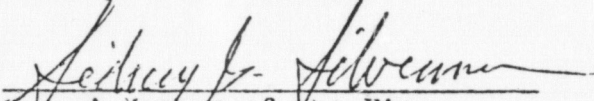
Howard C. Buschman, III

HCB:ir  
Enclosure

AGREED TO:

SILVERMAN & HARNES  
Attorneys for Plaintiff

By

  
A Member of the Firm



Excerpt from Deposition of J. Howe taken on  
June 6, 1973

Howe

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Q And Mr. Cowett just happened to be there that day?

A That is correct.

Q Did you write in advance to Mr. Lipper to tell him that you were going to be in town?

A No, I didn't. I may have called him.

Q Did you have any indication that Cowett was going to be there then?

A No, I didn't.

Q Was Cowett generally in Mr. Lipper's office when you went there?

A No. On occasion he was through the years, the last two years.

Q Did Mr. Cowett have an office or a room reserved for him in Lipper's office?

A No. The only time I ever saw Mr. Cowett in Lipper's office, he was sitting in Arthur Lipper's office.

Q At the breakfast meeting at the Carlyle, who else was there?

A Just myself.

Q How long did the meeting last?

A Approximately one hour, which included eating breakfast, too.

Q Did you write any memorandum or report on the

Excerpt from Deposition of Grayson Murphy  
taken on May 2, 1973



1  
2 other than those you have already named in connection  
3 with the IOS public offering?

4 A Yes.

5 Q Who would that be?

6 A Well, I talked with one or two other people in  
7 the SEC, by phone. I talked with Mr. Timothy Greene,  
8 who was the assistant to Mr. Budge, the chairman of the  
9 Commission, and later on I talked to two other men on the  
10 staff whose names I don't remember.

11 Q Do you recall any telephone conversations with  
12 any other persons emanating from the United States other  
13 than those with whom you have already identified as having  
14 personal meetings?

15 A I think that I -- well, let's see. I certainly  
16 talked with other people on the telephone. I made a  
17 number of calls to people outside of the United States  
18 in connection with the offering, various counsel, dif-  
19 ferent countries. I talked once with Mr. Howe of Crang  
20 & Company, in Canada.

21 Q I take it that you can't remember the names of  
22 these other people to whom you spoke with over the tele-  
23 phone, is that correct? Other than Howe and those that  
24 you have named?

25 A Well, I talked with people who were working in

Excerpts from Deposition of J. Howe, taken  
on June 6, 1973

1  
2 answer to this question at that time.

3 Q Wasn't it true that Cowett was coordinating  
4 the underwriting?

5 A On behalf of the corporation, on behalf of  
6 IOS, Ltd., I think that is true.

7 Q And on behalf of the selling share holders?

8 A In relation to the preparation of the pros-  
9 pectus and the underwriting facility of the Canadian  
10 underwriters, no.

11 Q How about the IOB offering?

12 A I am not familiar with the IOB offering, other  
13 than through a sub-underwriting agreement, we agreed to  
14 distribute about 150,000 shares to IOS employees, et-  
15 cetera, in Canada.

16 Q With whom did you negotiate that arrangement?

17 A Gilbert Bennett negotiated it with Cowett.

18 Q Cowett was acting for IOB or the selling  
19 shareholders or both?

20 A He was acting, to my knowledge, he was acting  
21 for the selling shareholders.

22 He was obviously acting for IOB in connection  
23 with the sub-underwriting agreement of the 150,000, be-  
24 cause as I recall, and this is only by recollection, he  
25 signed the IOB sub-underwriting agreement. I am not



1 through their subsidiaries or affiliates in Canada,  
2 could give Canadian dealers. So we were trying to drum  
3 up business through their Canadian subsidiaries.  
4

5 Q Any other trips to New York that you can re-  
6 member, other than what you have testified to, in the  
7 year 1969?

8 A To the best of my recollection, no.

9 Q What is the business of Grace Canadian Securi-  
10 ties?

11 A Grace Canadian Securities was a--not in 1969,  
12 I don't think, prior to that, was a broker/dealer in  
13 New York.

14 Q And in 1969 what was its business?

15 A I think they were a broker/dealer for part  
16 of the year.

17 Q What was Irving Grace's business?

18 A He was a principal in Grace Canadian Securi-  
19 ties.

20 Q Do you recall when you met with Mr. Grace in  
21 1969, what month?

22 A February.

23 Q When you visited New York in 1969, did you  
24 ever stay in an IOS suite in the Carlyle or the Regency?

25 A No, I am sure I didn't. And I wasn't aware



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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HOWARD BERSCH, :

Plaintiff-Appellant, :

v. :

Docket No.  
: 75-7031

DREXEL FIRESTONE, INCORPORATED,  
DREXEL HARRIMAN RIPLEY, BANQUE  
ROTHSCHILD, HILL SAMUEL & COMPANY,  
LIMITED, GUINNESS MAHON & CO.,  
LIMITED, PIERSON, HELDRING &  
PIERSON, SMITH BARNEY & CO.  
INCORPORATED, INVESTORS OVERSEAS  
BANK, LIMITED, ARTHUR ANDERSEN  
& CO., I.O.S., LTD. and BERNARD  
CORNFELD,

:  
: CERTIFICATE OF  
: SERVICE

Defendants, :

J. H. CRANG & CO., :

Defendant-Appellee. :

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The undersigned, a member of the Bar of this Court,  
hereby certifies that true copies of the Appendix have been  
duly served by hand delivery on counsel for all parties who have  
appeared in the above actions, on the 28th day of February, 1975.

Howard C. Buschman  
Howard C. Buschman

Dated: February 28, 1975



Sir:

Take notice that the within is a copy of  
.....  
which was duly made, entered and filed in the  
office of the Clerk of the.....  
.....on the .....  
day of.....19.....  
Dated, New York, N. Y. ....19.....

Yours, etc.,

**WILLKIE FARR & GALLAGHER**

Attorneys for.....  
Office and Post Office Address  
1 Chase Manhattan Plaza  
New York, N. Y. 10005

To:

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

HOWARD BERSCH,

Plaintiff-Appellant,

v.

DREXEL FIRESTONE, INCORPORATED,  
et al,

Defendants,

J. H. CRANG & CO.,

Defendant-Appellee

Sir.

Take notice that the within  
.....  
will be presented for settlement  
at.....Term, Part.....  
of the.....Court at the  
.....Court House, in the  
.....of.....County of  
.....on the .....day of  
.....19.....at.....  
o'clock.....M.  
Dated New York, N. Y. ....19.....

Yours, etc.,

**WILLKIE FARR & GALLAGHER**

Attorneys for.....  
Office and Post Office Address  
1 Chase Manhattan Plaza  
New York, N. Y. 10005

To:

CERTIFICATE OF SERVICE

**WILLKIE FARR & GALLAGHER**

ATTORNEYS FOR Defendant, J.H. Crang & Co.

1 CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

248-1000

Due and sufficient service of the within

.....  
is hereby admitted.

Dated New York, N.Y. ....19.....

.....  
Attorneys for